

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 LOU LOIBEN'S PERSONALITIES,)
5 INC.,)
6)
7)
8)
9)
10 Plaintiff,)
11 v.)
12) No. 15 C 1511
13 AKIB KHANANI (a/k/a "DJ Akib,")
14 a/k/a "DJ Akib Entertainment",) Chicago, Illinois
15 Defendant.) February 20, 2015
16) 1:30 p.m.

17 TRANSCRIPT OF PROCEEDINGS
18 BEFORE THE HONORABLE JORGE L. ALONSO

19 APPEARANCES:

20 For the Plaintiff: MANDELL MENKES LLC
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 For the Defendant: MR. AKIB KHANANI
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1 THE CLERK: 15 C 1511, Lou Loiben's Personalities v.
2 Khanani.

3 MR. ROSENFIELD: Good morning, Your Honor. Stephen
4 Rosenfeld and Rebecca Edwards on behalf of the plaintiff Lou
5 Loiben's Personalities, Inc. We also have the plaintiff, Lou
6 Loiben, here as well.

7 THE COURT REPORTER: Sir, your name, please.

8 MR. KHANANI: Akib Khanani, the defendant.

9 THE COURT: So obviously Mr. Khanani was served and
10 Mr. Khanani is present.

11 MR. ROSENFIELD: Yes, Your Honor. We gave him service
12 of all documents that were filed by the court.

13 THE COURT: And, Mr. Khanani, have you got an
14 attorney who is going to represent you here today, sir?

15 MR. KHANANI: Not today, no.

16 THE COURT: Counsel?

17 MR. ROSENFIELD: Your Honor, we brought, as the Court
18 is aware, a motion for a temporary restraining order. The
19 situation in this case is that Mr. Loiben owns Personalities,
20 Inc.; and Personalities, Inc., is a DJ entertainment company.
21 It's a small company. It has about 15 employees. And
22 Mr. Khanani worked for the company for a period of time. He
23 has now left the company. He gave his notice via text
24 message, left the company, set up a competing business. And
25 Personalities, Your Honor, will suffer irreparable harm if

1 Mr. Khanani isn't enjoined immediately from doing a number of
2 things.

3 First of all, he has taken trade secrets that
4 Personalities spent significant resources to acquire, more
5 than 30 years' worth of acquired intellectual property and
6 intelligence about a number of customers.

7 In addition, Mr. Khanani took and posted copyrighted
8 photographs on his new business website or his personal
9 website and on his social media accounts, both Instagram and
10 Facebook.

11 Finally, he marked a number of those photographs with
12 the hashtag Personalities, which -- which gives the appearance
13 of an association -- a continued association with
14 Personalities or some endorsement by Personalities.

15 So really the motion for temporary restraining order
16 has three bases and three asks. And I can go through them in
17 detail in a moment.

18 But the first is with regard to the copyright
19 violation. We want those photographs down. I understand -- I
20 actually spoke with Mr. Khanani yesterday. He advised that he
21 had taken certain of those photographs down. We still see
22 photographs up there. We would like an immediate order
23 requiring him to take those down. We would also -- in the
24 same vein, the Lanham Act claim and the copyright claim kind
25 of go together in this case, in that, the Lanham Act

1 violations are apparent on the photographs themselves, on the
2 posts, so if he takes the photographs down, I think that takes
3 care of both the copyright issues --

4 THE COURT: The hashtags are part of the photographs?

5 MR. ROSENFELD: Hashtags are part of the posts that
6 include the photographs. They aren't imbedded in the
7 photographs; but if he takes the post down in addition to the
8 photograph, I think that would handle both the Lanham Act
9 issue and the copyright issue.

10 With regard to the trade secret issue, if I can go
11 into that in a little bit of detail. My client -- his
12 company, Personalities, has been around since 1995. And they
13 do -- you know, they're a small company, about 15 employees,
14 and they do events such as bar mitzvahs, weddings, corporate
15 events.

16 In 2012 they decided to diversify and get into the
17 fashion show industry. And to do so, what they did is they
18 bought a company called Sound Machine. Sound Machine had been
19 the dominant company in the Chicago fashion show industry for
20 30 years. And the reason why it was dominant and the reason
21 why no one really could pierce into its dominance in the
22 market is because of the trade secrets it had, the client
23 profiles that it had. Its clients required that it had a
24 significant amount of knowledge about their businesses, a
25 significant amount of knowledge about what they liked; for

1 example, what types of songs they liked to play, when they
2 wanted the DJ to turn on and off the songs as the models went
3 down the runway. Basically there are hundreds and hundreds of
4 pieces of information that Sound Machine acquired from each of
5 these customers and created these customer profiles that
6 really -- although there are other players who tried to get
7 into the fashion show industry couldn't because of this
8 business intelligence that Sound Machine acquired over -- over
9 the years, all the customers' specialized requirements, all
10 the customers', you know, past contracts. It really had a
11 dominance.

12 What Sound Machine did when it acquired -- when
13 Personalities acquired it is it transferred all of that --
14 that intellectual property and also all of its other assets to
15 Personalities. And Personalities was then dominant in the
16 fashion show industry from 2012 until the present because of
17 these trade secrets that it had, because of the specialized
18 knowledge that it had and that -- frankly, not only the
19 information but also the specialized knowledge it had
20 personally developed in-house to run all of these -- all of
21 these fashion shows.

22 Then Mr. -- Mr. Loiben runs Personalities. He kept
23 all of this information confidential. He kept it on his
24 personal laptop, all these profiles on his personal laptop,
25 kept them secured, kept them personally. He gave them on a

1 need-to-know basis to basically only one employee,
2 Mr. Khanani. Mr. Khanani was hired by Personalities in 2011.
3 But when Mr. Loiben bought -- and Personalities bought -- the
4 Sound Machine business, he was tasked as kind of the head DJ
5 for the fashion show industry. So he was provided with a
6 number of these trade secrets necessarily in connection with
7 his employment. And he was told that --

8 THE COURT: What sort of secrets? Playlists?

9 MR. ROSENFIELD: Not just playlists, but exactly
10 what -- what each of these customers liked, how to approach
11 these customers. One of the things that all of these
12 producers think are important is they don't have to reteach.
13 So that's why they keep going back to the same people. So
14 it's not just playlists. It's how they -- how they like the
15 music set up, how they like, you know, the runways to the
16 extent that they --

17 THE COURT: And all of this is played out in public,
18 literally played out?

19 MR. ROSENFIELD: Well, certain of it -- certain of it
20 did. Certain -- certainly what songs were played out in
21 public. But all of the various details about how these
22 customers liked the playlists to be structured, what types of
23 music they like, how they -- how they liked the DJ to set up,
24 all of these various different things, how they -- you know,
25 what types of -- I guess that there are numerous different

1 types of ways of structuring these things based on the type of
2 event. And these -- and all of these producers require that
3 the DJ companies come to them with these playlists based on
4 this knowledge of how they like the music structured. They
5 don't want to just have the DJs come with, okay, these are the
6 songs with no thought behind it. And the thought behind it
7 and the formulas that they go through to put these things
8 together are closely guarded trade secrets.

9 And, again, that's why -- the real proof is in the
10 pudding here. If it was so easy to just watch, then you would
11 have many, many, many more people -- many more DJs get into
12 this and get these contracts. The fact of the matter is they
13 didn't. They tried, but they didn't. They didn't because
14 Sound Machine originally had that knowledge. It passed it on
15 to Personalities.

16 And then what happened was after Mr. Khanani left
17 Personalities' employ, for some reason, these contracts didn't
18 just go to some other third party. My understanding is
19 Mr. Khanani has now been, you know, in contact with certain of
20 these other folks and has gotten a couple of my -- my client's
21 main customers and has gotten shows. So it's -- it's no --
22 you know, it's -- it's no surprise.

23 Now, from a legal perspective, let's talk about the
24 case law for a minute because I understand from my
25 discussions -- from Mr. Khanani some of the things that he

1 might say. And I want to address those first.

2 I think that his main defense is going to be, I did
3 not contact these customers; they came to me; so, therefore, I
4 couldn't have divulged the trade secrets.

5 Well, that's not what the law says. The Illinois law
6 on trade secrets is very clear. First of all, with regard to
7 trade secrets, these types of specialized knowledge which give
8 a competitive advantage -- customer lists, customer
9 profiles -- have time and time again been considered trade
10 secrets under Illinois law. And there's no requirement under
11 Illinois law that you have a -- you know, a Nixon kind of
12 break-in and, you know -- and to steal the paper, right? The
13 knowledge, even if it's memorized through years of use, has
14 time and again under Illinois law been considered the --
15 enough taking of the trade secrets.

16 Now, with regard to who contacted who, we're not
17 claiming necessarily -- I mean, maybe he used these trade
18 secrets to contact the clients. But the fashion shows
19 themselves, when they are going to take place, that's public
20 knowledge. I mean, people know when the various fashion shows
21 are.

22 But if you look at the PepsiCo case -- and I can give
23 you a cite. It's a Seventh Circuit case from 1995. It's 54
24 Fed. 3d 1262. And I can pass up a copy if Your Honor would
25 like.

1 THE COURT: Sure.

2 (Tendered.)

3 MR. ROSENFELD: What PepsiCo deals with is it deals
4 with the inevitable disclosure doctrine under Illinois law,
5 under Illinois trade secret law. And the facts of that case,
6 at a very high level, were there was an engineer at PepsiCo
7 who wanted to go work for Quaker Oats. Quaker Oats had the
8 Gatorade product. PepsiCo had different sports drinks
9 products. And the engineer did not go in and take any -- take
10 any information and give it to Quaker Oats. Those weren't the
11 allegations. The allegations that Pepsi made were, look, he's
12 going to work on -- on a product that's a competing product.
13 So he will necessarily have to use knowledge he gained at --
14 within our employ. It doesn't mean that he will tell them the
15 secret to the Pepsi products. But because he had this
16 knowledge, because he had this specialized knowledge while at
17 Pepsi, going to Quaker Oats, he would necessarily have that.

18 And the Seventh Circuit recognized that and said,
19 yes, you're right; there is the -- what's called inevitable
20 disclosure doctrine that he would inevitably, because he had
21 this knowledge, have to disclose that information to a
22 competitor, use it in a competitive situation; therefore, they
23 sustained an injunction and precluded him from going to Quaker
24 Oats for a period of time, you know, after which that
25 information would necessarily become stale.

1 Well, the same -- the same analysis applies here,
2 Your Honor, because what we have is we have an employee who
3 took information, whether it's in his head or elsewhere, trade
4 secrets that my client spent 30 years developing and spent
5 substantial amounts of money to purchase when it purchased the
6 Sound Machine business. And whether he contacted clients,
7 whether they contacted him, him working on those clients --
8 the only reason he has those -- he would have those jobs is
9 because of this specialized knowledge. And it is that
10 specialized knowledge that my client spent so much time and
11 effort to acquire.

12 So for that reason, what we're asking now is a
13 temporary restraining order on the trade secret issue
14 precluding the defendant from working with those clients in
15 the fashion show industry -- he can work with them in other
16 contexts -- but working with them on fashion shows, which
17 would inevitably disclose the trade secret information.

18 Now, with regard to the scope and the duration of
19 this injunction, I agree that you can't preclude this forever.
20 We will admit that. But I don't know that that is necessarily
21 a germane question right now because all we're asking for at
22 this moment is a temporary restraining order, which only lasts
23 14 days. And certainly the question is whether it should be
24 one year, five years, three years. The case law is -- is not
25 exactly clear; but it's in that -- it's in that time frame.

1 We can talk about the duration more when we talk about -- as
2 you might expect, we'll come in on a preliminary injunction or
3 a permanent injunction. But with regard to a temporary
4 restraining order, I don't know that that is necessarily
5 germane to the issue.

6 THE COURT: Okay. Counsel, what's happening in the
7 next 14 days?

8 MR. ROSENFIELD: Your Honor, this is the beginning of
9 the fashion show season. And it's interesting, what's
10 happened over the years, because of Personalities' and Sound
11 Machines's dominance, is the companies just send them dates
12 and say, look, hold these dates open; and they have. And the
13 contracts are then done closer to the time frame.

14 In this case, now all of a sudden certain of those
15 clients are switching from saying, "Hold those dates open" to,
16 "We're going to go with the defendant."

17 And this -- the fashion show industry in Chicago is
18 really two specific blocks of time. There's the spring
19 fashion show season, which starts now and goes for about two
20 months into June, and then there's the fall season, which
21 starts, you know, back to school.

22 THE COURT: Are there any shows in the next two
23 weeks?

24 MR. ROSENFIELD: Yes, Your Honor, significant amounts
25 of shows and significant amounts of booking that will take

1 place in the next two weeks.

2 So the issue is, if we don't stop it now and
3 immediately, my client will be irreparably harmed because it
4 will -- once it starts losing these shows -- and these same
5 people do 10, 12, 15 shows -- it loses its entire season. I
6 mean, this is -- it's -- it's quite a coincidence, frankly,
7 that the defendant decided to quit and start, in effect, a
8 competing firm right before the spring fashion show season. I
9 mean, this is the time, this is the exact time, this is the
10 worst possible time for my client where everything is
11 happening in the fashion show industry.

12 THE COURT: Okay. So, again, to get specific, if you
13 submitted a proposed order, I didn't see it.

14 MR. ROSENFIELD: I -- Your Honor, I apologize. When I
15 initially filed, I didn't have a judge assignment so I did
16 not. I can submit a proposed order. In fact, I probably have
17 one with me. I know I have one on my computer that I can send
18 in. I can e-mail it in.

19 THE COURT: In terms of what I was able to figure out
20 what is your actual prayer for relief, it is very broad; but
21 you are getting more specific today. Some of it is obvious.
22 You want the photographs taken down. You want him to cease
23 using the name --

24 MR. ROSENFIELD: Right.

25 THE COURT: -- in a hashtag or any other way.

1 MR. ROSENFIELD: Right.

2 THE COURT: But on the issue of the trade secrets --

3 MR. ROSENFIELD: I would --

4 THE COURT: -- specifically, you are requesting?

5 MR. ROSENFIELD: We are requesting that the defendant
6 be precluded from working with the clients that -- basically
7 Personalities' clients that it has the competitive information
8 on. And really that is a relatively small number of people in
9 the upcoming four months. It's probably about -- it's
10 probably five names that we can submit to the Court. So we
11 could be extremely specific and say these --

12 THE COURT: And you have spoken to Mr. Khanani today.

13 Nothing has changed? Nothing --

14 MR. ROSENFIELD: I spoke with him yesterday, Your
15 Honor. I have not spoken with him yet today. He came into
16 the courtroom as the call was going on.

17 THE COURT: All right.

18 Mr. Khanani.

19 MR. KHANANI: He called me yesterday, and we spoke
20 yesterday.

21 First, can I just go through what he said and just --

22 THE COURT: Sure.

23 MR. KHANANI: The photos, Mr. Loiben -- I have an
24 Instagram account and a Facebook account and social media.
25 I'm very well-versed with social media. And I have a lot of

1 followers because I'm a DJ for social media. He advised me to
2 take the pictures of the fashion shows and post them to my
3 social media account and put the Personalities' hashtag on
4 there so it would promote his company. It's actually helping
5 his company when I was working for him to get the word out
6 that I'm promoting his company, like, I'm taking a picture of
7 what's going on, hashtagging Personalities so people know that
8 this is a Personalities' event.

9 THE COURT: So there's no question you did this while
10 you were working for him?

11 MR. KHANANI: I did this while I was working for him.

12 THE COURT: And as part of your work for him?

13 MR. KHANANI: Yes.

14 THE COURT: You're saying it still helps him; but you
15 understand he's saying thanks, but no thanks.

16 MR. KHANANI: I've taken every photo that -- I have
17 no problem taking every photo down. I don't want the photos
18 on my site. That's -- I don't want them. So I will take
19 absolutely anything down that you guys send me. If it's up
20 there, I'll take it down. I've already told you, I have taken
21 everything that -- in the e-mail that you sent me, every photo
22 I said I've taken down. And if you can find one, then -- some
23 of the photos though weren't taken by me. They were taken by
24 people in the audience that hashtagged me and Personalities.
25 So hashtags are just like branding. So I have no access to

1 those people's accounts, so I can't take that down. It's
2 people in the audience doing that. And I didn't tell them to
3 do it. I don't even know who they are.

4 THE COURT: You are talking about your Facebook, your
5 Instagram account that --

6 MR. KHANANI: Yes.

7 THE COURT: -- you're saying that you can't delete
8 something if somebody else put it up?

9 MR. KHANANI: Yes. It's like if somebody in the
10 audience takes a picture and they put a hashtag with DJ Akib
11 and they put a hashtag Personalities, it will show up on both
12 of our pages; but, like, we can't touch it. It's not our --
13 it's not my picture. And people in the audience do that.
14 Fashion producers post pictures all the time. They hashtag my
15 name. They -- I don't know if they hashtag Personalities or
16 whatever. But it's just to get the word out and spread the
17 word. But I have no control over those pictures.

18 MR. ROSENFELD: Your Honor, if I can interject?

19 We are only asking the defendant to take down those
20 pictures that he put up.

21 MR. KHANANI: But in the pictures you sent me, those
22 weren't all mine.

23 MR. ROSENFELD: Okay. Well, we can only ask him to
24 take down those that he has control over. And that's our
25 entire ask.

1 THE COURT: Okay. Go ahead.

2 MR. KHANANI: As far as trade secrets go, they're
3 acting like they put me through this rigorous training process
4 and told me the secrets of the trade. That's not -- that's
5 not how it is, and that's not how it goes. Like, for example,
6 last year -- Lou doesn't even know how to do a fashion show
7 correctly. He went to the client because I was unavailable.
8 I was doing a wedding. And he was going to do a fashion show
9 with another DJ with a client, Susan Glick. They ended up
10 calling me freaking out asking me to Dropbox and send him
11 songs from my event that I was doing -- I was doing a
12 wedding -- because they didn't know what to do and they didn't
13 know how to choose the songs; and the client was extremely mad
14 and freaking out.

15 Like, he wasn't really teaching me anything. The
16 process in how the -- as far as, like, how to choose songs,
17 the process in how to choose songs was the fashion show
18 producer gives me a photograph or shows me an outfit and she
19 says, I need a song that's chic; and then I'm just, like,
20 okay; I go through my music library, I go through my
21 knowledge. We -- me and the fashion show producer search on
22 YouTube. We get advice from college students, whatever the
23 case is. The client sometimes sends the songs. But it's
24 basically me just making a judgment, like, yeah, it's the new
25 song that just came on the radio; that will look perfect for

1 that. No training from Lou or any trade secrets that I can
2 tell have went into that.

3 I understand that by doing fashion shows, you get
4 better at it. And I am the first to admit that from when I
5 started to when I'm there right now, I've gotten better at it.
6 But I think any job that you do, whether you're a DJ, an
7 accountant, an attorney, you're going to get better at it over
8 time the more experience that you have.

9 There was no information, no written information that
10 I took from them. I left Lou's company. I have a very
11 good -- great relationship with the two fashion show
12 producers, Susan Glick and Tracy Tarrantino. I -- they call
13 me on a regular basis. They call me with -- they literally
14 just call me, like, oh, my God, I just heard -- I was at
15 another fashion show and I heard this song; like, check it
16 out, tell me what you think, get back to me. And that's,
17 like, our whole conversation. We're on a -- we're basically
18 friends now. They call me on a weekly basis. I have helped
19 Tracy with her website just as a favor. We work very well
20 together.

21 So, no, I did not contact them and I did not say, go
22 with me. I have told them that I don't even know what's going
23 on right now. I left Lou's company. I don't even know what's
24 going on. I don't even know if I can do any of your shows. I
25 don't know if I want to do any of your shows.

1 But one thing that he did say was that you've got all
2 the dates for this year, correct, from -- you said it in here;
3 you said, I got all the dates -- I got the fashion show dates;
4 I just didn't get the contracts.

5 Am I allowed to ask him a question? I'm sorry.

6 THE COURT: No. Go ahead, you can argue.

7 MR. KHANANI: Okay. So he said that I -- we got the
8 dates for this year, but we didn't get any contracts for them.
9 I'd like to see those dates. Did they send you any dates?
10 Like, what dates did you get? Because I got the list of
11 dates. They wouldn't send them to Lou because they didn't
12 want to work with Lou. They're very unhappy with his
13 performance.

14 And I didn't quit Lou's company because I wanted to
15 go take fashion show contracts. They're acting like it's a
16 huge, big ordeal and that there's so many -- it's, like, 25
17 events. It's literally, like, 20 grand in events. It's
18 not -- they don't dominate the fashion show market. There's
19 25 events that go on in one month just at the Merchandise
20 Mart. There's no dominance in the industry at all whatsoever
21 by Personalities.

22 So, I mean, that's my defense on the trade show
23 secrets. I mean, there are -- and there are also not a
24 significant amount of shows in the next two weeks. There are
25 zero shows in the next two weeks. So I'm not sure -- well,

1 for me. The shows that -- the shows that I know about from
2 Susan Glick or Tracy Tarrantino, the dates that they said that
3 they have shows, which were the only two people that I worked
4 with Lou on, there are absolutely no dates.

5 MR. ROSENFELD: Well, if that's true, Your Honor,
6 then a temporary restraining order wouldn't affect him. So
7 the balance of harms would clearly favor my client.

8 MR. KHANANI: But as --

9 THE COURT: Mr. Khanani, you are telling me here that
10 there aren't any shows that you have set up in the fashion
11 industry with any of these clients that haven't been named to
12 me? I know Macy's was mentioned. You mentioned Ms. Glick,
13 Ms. Tarrantino. But you're saying you have no events in the
14 fashion industry in the next two weeks?

15 MR. KHANANI: I have no contracted events at all with
16 any fashion show producers.

17 THE COURT: And you don't expect to have one within
18 the next two weeks, meaning the show would take place within
19 the next two weeks?

20 MR. KHANANI: I'm not sure. I haven't talked to them
21 about specifics because I didn't know what I could do and what
22 I couldn't do. I just basically left it as -- they called me
23 and they were, like, hey, we need to talk about upcoming
24 fashion show stuff. I'm, like, look, I left Lou's company;
25 I'm not really sure what's going on right now; I gotta get

1 back to you because I'm not sure what I'm legally allowed and
2 not allowed to do. And I just left it at that.

3 THE COURT: Just to clarify that a little bit,
4 counsel, he's allowed to do anything he wants outside of this
5 realm of the former clients in the fashion show industry,
6 right?

7 MR. ROSENFIELD: Absolutely, Your Honor.

8 THE COURT: All right. Mr. Khanani, anything else
9 that you want to say?

10 MR. KHANANI: Yeah. They were claiming that I have a
11 Macy's logo on my website saying that I did events for Macy's.

12 MR. ROSENFIELD: Your Honor, that's not part of this
13 case.

14 MR. KHANANI: Then why was Macy's mentioned, like,
15 ten times?

16 MR. ROSENFIELD: We're not claiming any trademark
17 infringement on behalf of Macy's.

18 MR. KHANANI: Do you mind if I look really quick? Is
19 that okay?

20 THE COURT: Sure.

21 (Brief pause.)

22 MR. KHANANI: Well, there's other things. "At the
23 time Personalities hired defendant, defendant did not have any
24 contacts or experience in the fashion industry." I've done
25 fashion shows with Akira, Nordstrom's, Paris Club, different

1 nightclubs. I was a DJ for six years before I joined Lou's
2 company. I've done every single event imaginable. So that's
3 just deliberately not true. It's just not true. I've done
4 many fashion shows before I even worked for Lou.

5 "Defendant even currently touts Macy's, one of
6 Personalities' clients, as one of his corporate clients on his
7 website located at DJAkib.com." Why is that relevant? I've
8 done events for Macy's for a company out of New York called
9 Scratch Events; and I have their permission to use Macy's on
10 my personal website as one of their clients.

11 THE COURT: Sir, they're not asking that I do
12 anything about that, nor could they.

13 MR. KHANANI: Okay.

14 THE COURT: They're not here on behalf of Macy's.

15 MR. ROSENFIELD: Absolutely, Your Honor.

16 MR. KHANANI: I was just making a case that's saying,
17 like, half the stuff in here is not relevant and it's just not
18 true. Yeah.

19 So I don't see why I should have a temporary
20 restraining order against me for not contacting these clients
21 or working with these clients because they, A, don't want to
22 work with Lou and, B, like, I'm friends with them. Like,
23 they're going to call me. They're going to ask me for stuff.
24 They have. Like, they've called -- one of the clients called
25 me yesterday; and she was just talking to me over regular

1 stuff; like, she was talking to me about stresses of her job.
2 Like, it wasn't -- we didn't really touch on anything fashion
3 show related. I'm friends with these people. I've worked
4 with them. That's kind of the way that it is.

5 So I'm sorry I -- yeah.

6 THE COURT: All right. Thank you, Mr. Khanani.

7 Counsel, let's go back to trade secrets again. I
8 need you to specify, more specifically identify, what the
9 secret is. I know we're talking about client lists is the
10 most concrete item, right?

11 MR. ROSENFELD: Sure.

12 THE COURT: Explain to me how it's secret, why it's
13 secret, and explain to me how your client maintained that
14 confidentiality in the context of this situation where there's
15 obviously a public show.

16 MR. ROSENFELD: Yes, Your Honor.

17 There are a number of things within the client list.
18 It's really a client profile. In addition to the client list,
19 the information that is kept for the client are the playlists
20 for those clients, going back 30 years; the types of music in
21 general these clients like. For example, certain clients like
22 more synthesized music, certain clients like music with words
23 on them; the type -- how these clients like to run their
24 fashion shows; you know, where do they want the setup.

25 It is a conglomeration of all of the intelligence

1 that the client -- that my client has received over 30 years.
2 And what that permits these clients to do, Your Honor, is
3 instead of -- instead of hiring somebody and teaching them all
4 of this, saying, no, I just -- I like -- I just like
5 synthesized music, I don't like music with words, I want you
6 to stand here, I want -- you know, when the models go down the
7 runway, here's how I like you to play it, here's the volume,
8 here's -- here are the cues. All that takes time. All that
9 is stuff that the clients specifically, you know, would --
10 would have to reteach someone new.

11 In addition, it's all of the contract information;
12 what have they contracted for; what are their contracts going
13 back 30 years; what -- you know, how do these clients, you
14 know, like to be approached.

15 He mentions that he's friends with these clients.
16 He's only friends with these clients because we put them in
17 touch. He met these clients through us.

18 But, in any event, Your Honor, it's all of the
19 nuances for each of these clients and their events going back
20 30 years, which is why -- which is why these clients come back
21 again and again and again because that is the competitive
22 advantage; that is the competitive information that
23 Personalities and Sound Machine when it originally ran had.

24 So it is the client lists and the client profiles in
25 particular. And those client profiles are detailed.

1 So what do we do to protect them? Well, we keep them
2 on a password-protected computer that only Mr. Loiben, who is
3 the president, has access to. He then -- he then divulges
4 that information to his DJ on a need-to-know basis; you know,
5 here -- okay, you're going to this new client, here's how you
6 should approach her; here's the types of things you should
7 approach her with in terms of music selection; here's how you
8 should handle the fashion show; here's what these people have
9 wanted in the past; they've wanted X, Y, and Z; so, you know,
10 let's do that for them. It's all of this business
11 intelligence.

12 And the case law is clear that those types of
13 business intelligence information that take time to procure,
14 that take years to procure are the types of trade secrets, the
15 competitive advantage, that have been upheld in the courts.
16 In fact, even -- courts have even upheld prospecting
17 information where people have made, you know, cold calls and
18 gotten prospects, I mean -- which has much, much, much less
19 value or information than what my client has. And it's not --
20 and, again, we're not saying that the names of every person
21 who is in the fashion industry, that's a trade secret. I
22 mean, it's the client profiles on these specific clients.

23 If the defendant says there are all these other
24 clients and we don't dominate the market, well, then he's --
25 then there's really no harm because he can go to any of those

1 other clients. All we're saying is don't go to our clients;
2 don't go to the clients that we spent significant money to
3 purchase the intelligence from, from Sound Machine; and that
4 we have spent significant time and effort in the past several
5 years maintaining. It's these relationships. It's these --
6 it's this information that my client has spent all this time.

7 And what defendant is trying to do is trying to take
8 that and use that in a competitive situation, and the law
9 specifically does not allow that.

10 MR. KHANANI: Can I respond to that, please?

11 THE COURT: Yes, sir.

12 MR. KHANANI: He said that there's client profiles
13 that are password protected. I have never seen a client
14 profile in my life.

15 Basically, it's working next to somebody and knowing
16 their personality. It's not a secret. Like, Lou could --
17 he's not telling me anything. He could not go there, and he's
18 not teaching me this stuff. By working closely with these
19 producers and with their assistants and with the models is
20 what I've learned. I'm a -- my talent as a DJ is what they
21 want. They have, of course, given me advice. They've done
22 things like that. But Lou, as he's proven in past situations,
23 he went there and tried to do one himself and he was calling
24 me for my help because I'm the one that has worked with these
25 clients. He sent me in blind. When I first started working

1 with these clients, like, they -- it was a struggle. And
2 since they told me what they've wanted, that's the only reason
3 why I am the way that I am because I -- it's, like, you work
4 closely with somebody for years and years, you know to speak
5 softly to this person; speak loudly to this person; this
6 person can't hear; this person doesn't like when you call him
7 sir. Like, it's just little things. It's not trade secrets.
8 There are no trade secrets. Those aren't trade secrets. It's
9 just learning somebody's personality and knowing what they
10 like; they like this type of music; they like that type of
11 music. But that's not the case either because none of
12 these -- it's about the outfits and it's about the designs and
13 it's about what their client wants. They're hired. So, like,
14 they get new clients all the time. The new client says, I
15 want this, this, this, this. They ask me for my personal
16 opinion and I literally pick songs off the Internet with them.
17 We search YouTube for hours at a time, and we take songs off
18 the Internet. It has nothing to do with anything that Lou is
19 doing. These are not trade secrets that he taught me.

20 MR. ROSENFIELD: Well, Your Honor --

21 THE COURT: Counsel, do you have the capability of
22 drafting a proposed order now?

23 MR. ROSENFIELD: Yes, Your Honor.

24 THE COURT: You can show it to Mr. Khanani and you
25 can show it to me and we can pass the case.

1 MR. ROSENFIELD: Okay. That's fine. Thank you, Your
2 Honor.

3 THE COURT: We are going to call the case again.
4 They're going to show you a proposed order. You'll have
5 another chance to argue. They are going to show you what they
6 want me to enter today so you will know specifically what they
7 want you to be barred or enjoined from doing over the next two
8 weeks, and then I'll hear from both sides again. But I'd like
9 to see that also before we recall the case. Okay.

10 MR. ROSENFIELD: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. KHANANI: So just wait here?

13 THE COURT: Or outside so you can talk to them.

14 MR. KHANANI: Okay.

15 MS. EDWARDS: Thank you.

16 MR. KHANANI: Do I have to talk to them?

17 THE COURT: No, you don't have to.

18 (Recess taken.)

19 THE CLERK: Recalling, 15 C 1511, Lou Loibens
20 Personalities v. Khanani.

21 MR. ROSENFIELD: Good afternoon again, Your Honor.

22 THE COURT: Good afternoon.

23 All right. And, counsel, you have prepared and
24 tendered and shared with Mr. Khanani your proposed temporary
25 restraining order, correct?

1 MR. ROSENFELD: All of the above, Your Honor.

2 THE COURT: Mr. Khanani, have you had a chance to
3 review it?

4 MR. KHANANI: Yes.

5 THE COURT: All right, sir. What's your position?

6 MR. KHANANI: My position is I will take down every
7 image that he wants me to.

8 Encouraging or facilitating others to infringe
9 Personalities' copyrighted works. I will not do that.

10 Making representation or implication or -- of
11 affiliation, connection, or association -- I don't have to
12 read these, do I? I'm sorry.

13 Hashtag, I will never put another hashtag of
14 Personalities again.

15 Soliciting or contracting with Zzazz Productions,
16 Tracy, Merchandise -- I don't feel like I should have to -- I
17 don't feel like I should not be able to talk to these people
18 or work with these people.

19 The reason why I quit Personalities was because Lou
20 still owes me money for fashion shows from over nine months
21 ago. I have not been paid on these fashion shows. He was
22 also booking me on my dates and then canceling them last
23 minute, for some reason putting other DJs on them, so it was
24 costing me money. Like, I could book myself at a nightclub or
25 I could book myself at a wedding or doing something else. I

1 could market myself for those dates. So that's the reason why
2 I quit.

3 THE COURT: Mr. Khanani, at this point, I've got
4 sworn -- in essence, you haven't heard anybody sworn in from
5 the plaintiff's side, from Mr. Loiben's or Personalities'
6 side. But I have a sworn declaration from him.

7 MR. KHANANI: Okay.

8 THE COURT: And you are also giving me information,
9 but you're not sworn. So I'm going to ask, Ms. Fratto, that
10 we swear him in so that I can consider this more like evidence
11 from --

12 MR. KHANANI: Thank you.

13 THE COURT: -- the other side.

14 (Defendant sworn.)

15 MR. KHANANI: So that's the reason why I was
16 frustrated with this company and I was quitting.

17 I also quit in February, which is, like, a very slow
18 time for Personalities. Like, I wouldn't quit in a high
19 traffic time when he has, like, a ton of events and things
20 like that. So, like, I felt that by me leaving this company
21 in the middle of -- beginning of February, that, you know, on
22 the books, like, on the calendar, I saw less than ten events
23 for the whole thing. So I thought that he'd be able to, you
24 know, not be at all, like, hurt or anything because he has
25 three other DJs that work with his company that would be able

1 to handle it. So that's the reason why I left his company.

2 As far as the -- what their -- the trade secrets, the
3 music is made public. Like, I'm playing the music. Anybody
4 can come and hear the music corresponding with the songs. So,
5 like, some DJs go to other fashion shows just so they can get,
6 like -- just so they can hear the songs that are played in the
7 fashion shows. I watch fashion week from New York. I pull
8 YouTube clips just so I can listen to the music that they're
9 playing to give me better ideas of what I can do to make
10 myself better. So everything that I play is public; like,
11 they're hearing everything. So any other DJ can come in and
12 be, like, oh, I heard it here; I -- here's the producer; this
13 is what she likes; this is what she doesn't like; this is what
14 works with this outfit.

15 I don't see anything private. They can -- there's an
16 app on your phone called Shazam. You can literally press a
17 button and it will listen to the song and it will tell you
18 exactly what song is playing for that specific trend or outfit
19 or whatever. It's public. It's public knowledge.

20 As far as the profiles that he was talking about,
21 I've never seen a profile written down anywhere for any
22 fashion show producer anywhere. There's no profiles that I've
23 ever seen in my entire life.

24 Client lists. Susan and Tracy are the two clients
25 that I would consider working with. They're both well-known

1 fashion producers in Chicago. It's -- you can search any --
2 it's all public knowledge. These aren't private client lists
3 that nobody knows about. They're on WGN Morning Show. I know
4 Tracy is. They're very high-profile fashion show producers.
5 And it's very well known that they produce the certain shows.
6 It's made public as well.

7 I don't think that I should have this temporary
8 restraining order because just because there's no shows within
9 the 14 days, I still need to prepare for shows that are
10 upcoming. I still think that I should be able to work with
11 these producers because, A, I didn't sign a non-compete with
12 Lou; B, I did not sign an employment contract with Lou; and,
13 C, I'm not going after any contracts that he has with any
14 producers already signed or anything. And they've expressed
15 interest that they want to work with me. They said -- when I
16 told them that, hey, I left Lou's -- I left Lou's company, I'm
17 not really sure what's going on, I have to find out legally
18 what I'm able to do, they said, we don't want to work with
19 Lou; we just want to work with you. And I said, okay, I will
20 get back to you, I don't know what I'm able to do or not. I
21 feel like it's going to tarnish a relationship, not only a
22 business relationship, but also a friendship.

23 Another thing too is they've hired me without Lou's
24 company. They paid me directly. So these aren't only Lou's
25 clients. They're my clients as well.

1 THE COURT: All right. Counsel, any other evidence?

2 MR. ROSENFIELD: No, Your Honor.

3 THE COURT: Argument?

4 MR. ROSENFIELD: Your Honor, I think that the evidence
5 has been clear on the copyright, on the Lanham Act.

6 I think on the trade secret it is also entirely clear
7 that what -- what defendant has been talking about are the
8 exact things that make this information proprietary. He's
9 been talking about, well, you know, this person -- this person
10 we know that you have to speak softly with; this person we
11 know -- all that stuff, all that intelligence is gathered over
12 these 30 years. It is these types of intelligence that are
13 within -- I mean, those are just small pieces of these
14 profiles. But it's that type of intelligence that's gathered,
15 that's in one place that makes -- that gives Sound Machine and
16 Personalities this competitive advantage.

17 And it's -- I'm sure that the defendant hasn't seen
18 the printout of these profiles. He's given the information he
19 needs to go and do his job, which is from these profiles.

20 So -- in any event, Your Honor, I think that it's
21 clear that we have a protectable interest. I think the case
22 law is clear that this type of business intelligence gives us
23 a protectable interest.

24 Under the inevitable disclosure doctrine, whether he
25 has disclosed it or not at this point is irrelevant, as it

1 will be inevitably disclosed by his use of this type of
2 information in working on the fashion shows.

3 And all we're asking him to do is stop working on
4 fashion shows for these five clients or one -- excuse me --
5 four clients that we specifically listed. It's a very narrow
6 group. And if he claims that there are all these other
7 fashion shows, all these other clients out there, he's more
8 than welcome to work on those and do whatever he wants because
9 we don't have that intelligence on anyone other than the
10 people who we're listing here.

11 THE COURT: All right, Mr. Khanani, one last time.

12 MR. KHANANI: I just don't see -- I don't see how
13 they have any evidence or any type of -- any type of way to
14 tell me that I can't work with these clients. I don't think
15 they've correctly proven that I have broken any type of trade
16 secrets. They're not secrets. They're public knowledge. I
17 mean, it's just the way that it is. And they're not Lou's
18 clients. They're both of our clients because I've worked with
19 them directly. They've paid me directly for fashion shows
20 last year.

21 THE COURT: Outside of your employment with --

22 MR. KHANANI: Outside of my employment with Lou. I
23 do not have an employment contract with Lou. And I also do
24 not have a non-compete with Lou. And -- yes.

25 MR. ROSENFELD: Well, that would be a breach of his

1 duty of loyalty. But, nonetheless, it's -- it doesn't change
2 the calculus, whether he worked independently during his
3 employ with Lou using the same information.

4 THE COURT: Counsel, obviously the weakest part of
5 your case here goes to this trade secrets. So one more time,
6 what is the trade secret, sir? Aside from these lists and
7 protocol, let's get to the heart of the issue, which is
8 whether the identity of these four individuals is a trade
9 secret.

10 MR. ROSENFIELD: No, Your Honor. The identity of the
11 four individuals we are not claiming is -- is a trade secret.
12 It is the business intelligence that goes along with that
13 identity. I mean, it is -- we're not disputing that it's well
14 known that Ms. Tarrantino or Ms. Glick produce fashion shows
15 in Chicago. The identity of those folks is known in the
16 industry.

17 It is the business intelligence that Personalities
18 has gathered on these folks over that 30-year period of time,
19 which has given them the lock on them in the industry. I
20 mean, that's the -- that's the proof of the value of this
21 business intelligence. The fact that over that period of
22 time, these folks have not hired -- despite many other DJs
23 trying to get the business, they have not hired anyone else
24 other than Sound Machine or Personalities or, apparently, the
25 defendant while working for Personalities. But the reason why

1 is that they expect -- they expect their DJs to have this
2 information that they have gathered over this period of time
3 that gives us an advantage, a competitive advantage over
4 people because they don't have to relearn it. They don't have
5 to be told it. We know all of the business intelligence. We
6 have spent a lot of time, a lot of money acquiring that. And
7 that -- those profiles are the trade secret, Your Honor.

8 MR. KHANANI: Can I just counter with one more thing,
9 please?

10 They're not hiring me because of any -- they're
11 hiring me because of my skill as a DJ and my style and my
12 talent as a DJ.

13 Their previous DJ that they were working with, that
14 Lou bought his company, was DJ'ing with two iPods and a mixer.
15 I bring in state-of-the-art equipment. I can mix; I can
16 scratch; I can do things that these older DJs and the person
17 they were working with before could not do. And they love
18 that about me. They -- this is my personality. This is
19 something that I do with or without Lou's company. It's just
20 something that I've made a name for myself when I do
21 nightclubs and when I do different weddings and when I do
22 other fashion shows that have nothing to do with Lou. That's
23 why they're hiring me. That's why they want to work with me.
24 It's not because of these trade secrets that I don't think
25 that you're -- there are no trade secrets that you have

1 proven. There's nothing. Like, you can't give a straight
2 answer on a trade secret.

3 Sorry if I was out of line.

4 I have not seen a trade secret that you can actually
5 argue that's a real secret. Everything is public knowledge.
6 They want me for my talent as a DJ. And they want me for my
7 style as a DJ, my personality. And that's why I think that
8 it's not right legally that you are asking for a 14-day
9 restraining order to not contact these clients because they're
10 not only Lou's clients; they're my clients too.

11 THE COURT: Based upon the evidence, including the
12 declaration of Mr. Loiben and the evidence that I heard here
13 in open court under oath, I'm going to grant partial relief;
14 in essence, the part of the relief that's agreed to at this
15 point. On the proposed order, I'm going to grant the first
16 three but not the fourth restriction or injunction.

17 He is going to be enjoined from infringing on
18 Personalities' copyrighted works. That includes taking down
19 all of the photographs, copyrighted photographs.

20 He is enjoined from encouraging or facilitating
21 others regarding infringement of copyrighted works.

22 Also he is enjoined from making any representation or
23 implication of affiliation, connection, or association with or
24 sponsorship or approval by Personalities. An example of that
25 is what we had talked about here, the hashtags or the use of

1 the term Personalities or Personalities, Inc. on his website
2 or social media accounts.

3 I will point out that initially, Mr. Khanani, in
4 terms of his representations, seemed to be saying that there
5 was no harm, in terms of the balancing that has to take place,
6 the balance of harms. But implicit in what he was saying, and
7 he made it clear later, is the fact that that is not true. He
8 obviously does have an interest in going forward with these
9 contacts, the contacts and possible contracts that the
10 plaintiff wants him to be barred from making. So I think that
11 there is harm here and that balancing does come into play. So
12 at this point, the order is going to be entered as to those
13 three issues but not as to soliciting or contracting with the
14 four individuals that were proposed; that being Zzazz
15 Productions, Z-z-a-z-z, i.e., that person is Tracy Tarrantino
16 who has been mentioned; Merchandise Mart Properties,
17 Incorporated. That was the aforementioned Susan Glick and her
18 associates. Also Harper College. That's Mr. Thomas Tucker.
19 And Live Event Productions. That's Ava Anthony. So that part
20 of the motion is not going to be granted.

21 14 days from today, Ms. Fratto, is March --

22 THE CLERK: March 6th.

23 THE COURT: March 6th at 4:00 p.m. The order shall
24 remain in full force and effect for 14 days until 4:00 p.m. on
25 March 6th unless modified or dissolved before that date.

1 I agree with the plaintiff that no bond is needed;
2 that that is waived.

3 MR. ROSENFELD: Your Honor, if I might ask for a date
4 before that, before the expiration on March 6th, for a
5 preliminary injunction hearing?

6 THE COURT: Ms. Fratto, if I'm going to transfer this
7 to the magistrate judge, do we set a date or let the
8 magistrate judge figure it out, he or she will prioritize the
9 case because of the nature of the claim?

10 THE CLERK: Correct. We won't set a date.

11 MR. KHANANI: Your Honor, may -- I'm sorry to
12 interrupt.

13 I will take down any picture that they want. But I
14 just don't want it to come to where they come and say, these
15 pictures are still up. In the social media, people copy and
16 paste pictures and they could take an image that I put and put
17 it on another website. So anything that they see that they
18 don't want up, if they can, like, somehow e-mail me and I will
19 take -- do my best to take everything that I have control over
20 down. But I just don't want to come to court again and they
21 say, he didn't follow with this order because this stuff is on
22 some certain website. They could be on fashion show websites.
23 I don't know. That's just the way that social media is. You
24 can never control what's out there. But anything that I have
25 control over -- I've already taken down from Instagram and

1 from Facebook and there was -- there wasn't anything I saw on
2 my website; but anything that they've sent me is taken down,
3 but I can't control everything.

4 THE COURT: Counsel, if you believe that there is
5 something he can control, he's inviting you to inform him of
6 that so that he can take care of it.

7 MR. ROSENFELD: Sure.

8 THE COURT: All right. I'm going to transfer it to
9 the magistrate judge. The assigned magistrate judge here
10 is --

11 MR. ROSENFELD: I believe it's -- one moment, Your
12 Honor.

13 THE CLERK: Judge Rowland.

14 THE COURT: Judge Rowland.

15 MR. ROSENFELD: Judge Rowland, right.

16 THE COURT: And then Judge Rowland will reach out to
17 the parties. And, Ms. Fratto, can we work off of their
18 proposed order and amend it?

19 THE CLERK: Yes.

20 THE COURT: And I will enter that order today.

21 And is Mr. Khanani served with that order?

22 MR. ROSENFELD: He has a copy of it --

23 MR. KHANANI: I have a copy.

24 MR. ROSENFELD: -- Your Honor.

25 THE COURT: Okay.

1 MR. ROSENFIELD: So, Your Honor, I should schedule the
2 preliminary injunction hearing with Magistrate Judge Rowland?

3 THE COURT: Yes.

4 MR. ROSENFELD: Okay. Thank you, Your Honor.

5 THE COURT: Thank you.

6 MS. EDWARDS: Thank you, Your Honor.

7 MR. KHANANI: So he's going to contact me for a court
8 date? Somebody is?

9 THE CLERK: Yes. They'll let you know when it's
10 before the magistrate judge.

11 MR. KHANANI: And then I have to show up for court
12 and -- to say that I didn't do anything or --

13 THE COURT: He is going to make a motion for a
14 preliminary injunction.

15 MR. KHANANI: Okay. Thank you.

* * * *

18 I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Nancy C. LaBella
Official Court Reporter

March 5, 2015